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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/731,085

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David Smith

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EXAMINER

WARREN, DAVID S

ART UNIT

PAPER NUMBER

2837

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/731,085	Applicant(s) SMITH ET AL.	
	Examiner David S. Warren	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-56 and 58-65 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-56 and 58-64 is/are allowed.
- 6) ☒ Claim(s) 65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 65 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 65 calls for embedding port information into the track name and instrument file, “whereby a single standard MIDI file outputs to more than one MIDI port with different information on each port.” The specification is completely silent as to how the Applicant intends to accomplish this. It appears from the specification that the Applicant has merely named the title of the track with an intended port and then relies on some parsing application that is not a part of Applicant’s invention.
2. Claim 65 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: merely embedding port information into a track name will not output a single SMF to more than one port with different information on each port.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cakewalk Pro Audio 9: User's Guide. 1999. Hereinafter, "*Cakewalk*"). *Cakewalk* discloses generating port information (see table page 3-13), naming a track (see table page 3-13), and the ability to convert to a SMF (see heading top of page D-2). The Examiner maintains that both the track name and port information would be maintained in the conversion via the "FF status byte" (FF 03 for track name and FF 21 01 pp). The Applicant is merely naming the track with port information. A user of *Cakewalk* would certainly be able to name the track in any way. (It is noted that the system that parses track name information is not a part of the Applicant's invention, as stated in the Applicant's response to the previous Office Action.) It would have been obvious to one of ordinary skill in the art to name the track with port information. The motivation for doing so would be to allow a user to display port information wherever track title information is displayed (so a user can immediately ascertain port information).

Allowable Subject Matter

3. Claims 16 – 56 and 58 – 64 are allowed.
4. Regarding claims 16 – 51, the prior art does not disclose the use of a first data structure representing plural musical pieces (including notes of the pieces), a second data structure including instructions for selecting and arranging the plural pieces on respective tracks, applying the second data structure to the first to produce a musical performance, wherein the second data structure is operable to control instruments and music information, and wherein the music is disposed across plural channels, and wherein each instrument and its music can be modified by the second data structure. Regarding claims 52 – 56 and 58 – 64, the prior art does not teach the use of first and second show files for modifying a MIDI file (which remains intact and not modified) and for establishing a vamp.

Response to Arguments

5. The Applicant's arguments with respect to claim 65 has been considered but is not persuasive. The Applicant argues that Cakewalk files do not conform to a SMF and if a Cakewalk file were converted to an SMF, any port information would be lost. The Examiner does not concur. While it is true that the original MIDI specification would not support port data, port data can now be incorporated into a standard MIDI file format via protocol "FF 21 01 pp" (see "The MIDI File Format" attachment). As stated supra, the

Examiner maintains that the Applicant has done nothing more than name a track with port information. And any user could do this to, say, remind him/herself as to which port is associated with which track. Furthermore, the attachment also states that "it is acceptable to have more than one Port event in a given track, if that track needs to output to another port at some point in the track." This is synonymous with Applicant's claim limitation of "whereby a single standard MIDI file outputs to more than one MIDI port with different information on each port."

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. "The MIDI File Format" contains protocols for the Standard MIDI File – specifically see pages 6 and 8.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2837. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2837

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

dsw

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DAVID S. WARREN